

# **THE SILVERSTEIN LAW FIRM**

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June 16, 2011

**VIA FACSIMILE (202) 245-0465**  
**BY EMAIL [brownc@stb.dot.gov](mailto:brownc@stb.dot.gov)**  
**AND U.S. MAIL**

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Surface Transportation Board  
Attn: Ms. Cynthia Brown  
Section Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington D.C., 20423

ENTERED  
Office of Proceedings

JUN 17 2011

Part of  
Public Record

Re: **STB Docket No. AB-6 (Sub-No. 477x), BNSF Railway Co.**

Dear Ms. Brown:

This firm and the undersigned represent Excalibur Property Holdings LLC and George Brokate, property owners in the City of Monrovia, California, who will be significantly and adversely affected by the project of which BNSF's proposed abandonment and Petition for Exemption are a part.

**We respectfully request a 21-day extension of time through and including Monday, July 11, 2011 in order to file objections and comments in response to BNSF's Petition for Exemption filed on May 31, 2011. Because we have recently been informed that the deadline for filing objections is Monday, June 20, 2011, we respectfully request your response to this request on Friday, June 17, 2011.**

We request this extension of time because we have been prejudiced by confusion created by the current ambiguities in the STB rules and by statements from STB staff regarding the date by which objections were due.

Our office diligently inquired of STB staff on several occasions over the past two months regarding the procedure and timing for objections to or comments on the Petition for Exemption. We were told on May 12, 2011 by a STB attorney that once BNSF filed its Petition for Exemption, our client would have at least 40 days to object (20 days after publication in the Federal Register.) We were told that objections would not be required sooner because the public would not even have notice of the petition until after

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publication, and that this was the manner in which the STB interpreted its rules, including 49 CFR 1152.60.

However, yesterday, June 15, 2011, our office was told that, on the contrary, under 49 CFR 1104.13(a), any objections or comment on the Petition for Exemption would be due by this coming Monday, June 20, 2011 (20 days after the petition was filed).

Today our office called again for clarification and was told by an STB attorney that we had 40 days (20 days after publication in the Federal Register) to object to the Petition for Exemption. But when we asked about the new information that any objection was due by Monday, we were told that STB staff had conferred about the issue yesterday while the STB attorney was out and reached the conclusion that the deadline was actually 20 days from filing. When we attempted to reconcile this discrepancy, we were then told by David Kruschwitz that another STB attorney would call us back shortly. Instead, we received a further email from Mr. Kruschwitz stating that we should "hang tight" for further information. When we called again, we were told that Mr. Kruschwitz was gone for the day, as was the attorney who was going to call us. We were subsequently told by STB attorney Rudy Saint Louis that the STB may eventually propose a rule change in order to clarify the timing for objection to a Petition for Exemption.

This is also a special case because of pending environmental issues. In its Petition for Exemption, BNSF relies on a Supplemental Environmental Impact Report ("SEIR") certified by the Gold Line Construction Authority on or about January 19, 2011. However, reliance on that document is misleading because BNSF does not appear to have informed the Board that the SEIR is currently being challenged in California state court, *Excalibur Property Holdings LLC v. Pasadena Metro Blue Line Construction Authority*, Los Angeles County Superior Court Case No. BS130732, filed February 17, 2011. Invalidation of the SEIR, as sought by the litigation, would invalidate a large portion of the environmental review on which the BNSF Petition for Abandonment is based, thereby also rendering any decision by the STB invalid. Accordingly, no action should be taken on any BNSF or other request for abandonment until complete resolution of the pending state court litigation.

Although we greatly appreciate the assistance we have received from STB staff, we have been prejudiced in terms of timing to file objections to the Petition for Exemption in this case by the inadvertently conflicting information we received from various representatives of the STB. Our clients have valid and good faith objections to the Petition for Exemption. It is not possible to meaningfully file those objections by next Monday. We need a reasonable amount of additional time to respond to the Petition for Exemption. We respectfully request an additional 21 days from June 20, 2011, to and

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including Monday, July 11, 2011. Since objections would otherwise apparently be due on Monday, June 20, 2011, we respectfully ask that this request be considered immediately and our office advised of the decision on Friday, June 17, 2011.

Thank you very much for your attention to this matter. Please contact us with any questions or comments.

Very truly yours,

*Robert P. Silverstein /JLC*

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM

RPS:aa

cc: David T. Rankin, Senior General Counsel, BNSF  
Rudy Saint Louis, Esq., STB (via email)